



SBA Franchise Registry

Michele Courneya,
SBA Senior Franchise
Counsel/Minnesota District
Counsel



Eligibility & the Franchise Registry

- How to Access the Franchise Registry
- How to Use the Franchise Registry
- How to Use Private Information on the Registry
- What if a Franchise is Not on the Franchise Registry
- Determining Eligibility of Non-Registry Franchises



How to Access the Franchise Registry

- Registry is on Internet at www.franchiseregistry.com
- You can also access this site from SBA's banking site www.sba.gov/banking
- If you don't have Internet access, contact your local SBA office and ask them to check the Registry.



How to Use the Franchise Registry

- Lenders and SBA may assume Franchises listed on the Registry are Eligible
- If Franchise is listed on Registry, Lender only needs to obtain a Certificate of No Change or a Certificate of Change.
- If Certificate of No Change is provided, no further review of the franchise documents is necessary.



How to Use the Franchise Registry cont.

- Send Certification of No Change to SBA with the application or put it in your file for PLP loans.
- If Certificate of Change is provided, have the Franchisor send a copy of Certificate to Senior Franchise Counsel and Frandata. Frandata will contact Franchisor for review of changes.
- Wait to approve loan until changes have been reviewed and approved.



How to Use Private Portion of the Registry

- Obtain User Name and Passcode from PLP Center, Sandy Lear, 916-930-2461
- Go to www.franchiseregistry.com/private
- Enter User Name and Passcode
- Click on “Lender’s Welcome”
- Search for Franchise by name or industry.

How to Use Private Portion, Cont.

- You will find the:
 - ◆ Date the franchise was put on the Registry
 - ◆ Franchisor Contact Information
 - ◆ Eligibility Worksheet Franchise Documents, Addenda
- Review sections of documents for Franchise you are interested in
- May be useful in reviewing unlisted Franchises in similar industry



What if a Franchise is Not on the Registry?

- Only franchises listed on the Registry have been found eligible under 121.103(m) for all SBA loans
- Just because a Franchise has an SBA Franchise Code does NOT mean it's eligible
- Franchise Documents must be reviewed for each loan, no matter how many SBA loans have been made to that franchise.



Franchises Not on Registry Cont.

- Review is necessary because:
 - ◆ Documents may have changed
 - ◆ Franchises eligible in one state may NOT be eligible in another
 - ◆ Franchisors may have several different agreements
 - ◆ Franchise may Not be eligible without an amendment negotiated by SBA or PCLP



How to Determine Eligibility of Non-Registry Franchises

- See 13 CFR 120.100(d), 13 CFR 121.103(g), SOP 50-10(4) p.75, and SOP 70-50(3) App. 3 for Franchise Eligibility Guidelines
- You are determining whether Franchisor is affiliated with Franchisee and too big for SBA size regulations.



When Does Affiliation Exist in Franchises?

- When the Franchisor controls or has the power to control the Franchisee
- When the Franchisee does not have the right to profit from its efforts, or bear the risk of loss commensurate with ownership



Franchisor May:

- Establish quality control guidelines
- Impose premises design
- Mandate advertising & accounting formats
- Require training
- Impose special conditions on Franchisee for specific business needs



Franchisor May Not:

- Charge excessive franchise fee
- Prohibit or excessively restrict transfer of franchise
- Retain sole discretion in decisions on transfer or termination
- Control all of Franchisee's receipts and billings and hire all employees
- Control the price it will buy back the Franchise business.



If Franchise is Not Eligible

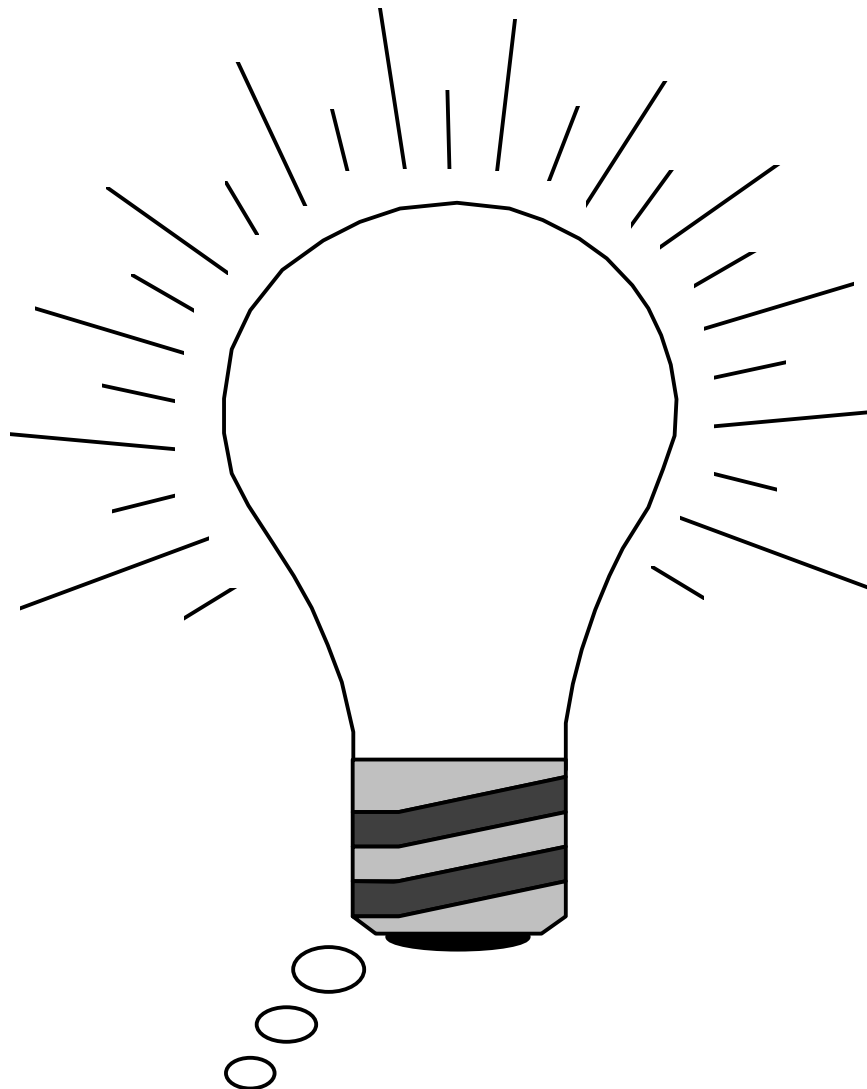
- Notify the Franchisor with the reasons
- Try to negotiate an amendment to the agreement to fix problems
- Suggest Franchisor apply for the Registry if they plan on doing lots of SBA loans
- Notify Senior Franchise Counsel



Senior Franchise Counsel Needs:

- Name of ineligible Franchise
- Date of the Franchise Agreement you reviewed
- A brief statement of the reasons franchise is ineligible
- Whether you negotiated a fix and what amendments you were able to get

Enlightened????

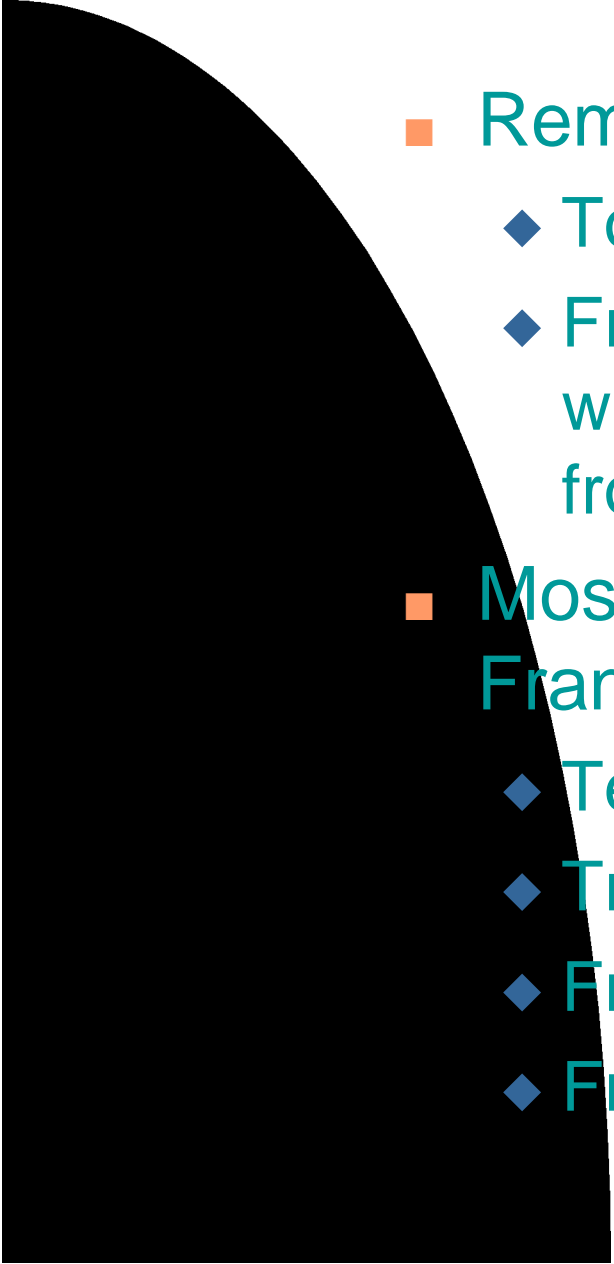




Who to Contact with Questions

- Local SBA Processing Office
- FRANCHISE E-mail Box -
FRANCHISE@sba.gov
- Senior Franchise Counsel,
michele.courneya@sba.gov,
Phone number (612)370-2353
- Franchise Registry Counsel,
sharon.brenna@sba.gov, Phone
number (612)370-2341

Examples

- 
- Remember 2 major issues are:
 - ◆ Too much control by Franchisor
 - ◆ Franchisor interferes significantly with Franchisee right to benefit from profits.
 - Most common problem areas in Franchise Agreements:
 - ◆ Termination
 - ◆ Transfer
 - ◆ Franchisor Control of accounts
 - ◆ Franchisor control of employees



SOP Examples

- Franchise fee = 52% of gross profits
- Franchisor may terminate without cause
- Franchisor has sole discretion in consenting to transfer of the franchise
- Franchisor may terminate if the Franchisor opens a retail store in the Franchisee's primary zip code



SOP Examples, Cont.

- Franchisor has the option to purchase Franchisee's assets at the end of or if there is a breach of the agreement, and Franchisor has the right to control the purchase price by unilaterally defining the "fair market value" and/or unilaterally selecting an appraiser for the assets



SOP Examples, Cont.

- Temporary personnel service where Employees hired for the Franchisee business are on the Franchisor's payroll, Franchisor handles all billing activities for the Franchisee, and the Franchisor shares losses with the Franchisee on the same basis as the sharing of gross profits.



Example 1

- Language: “Franchisor may withhold consent to transfer ownership or control arbitrarily and for any reason whatsoever or may condition any consent in its sole discretion.”
- Problems?



Example 1 - Fix

- “Franchisee will be allowed to transfer the franchise to a transferee that meets the Franchisor’s Qualifications with the Franchisor’s written consent. Franchisor’s consent will not be unreasonably withheld.”



Example 2

- Franchisee must deposit daily receipts into a bank account controlled by the Franchisor by the next business day. Franchisor pays all expenses and other costs of the franchised business, retains royalties and marketing fees, then remits the difference to Franchisee.



Example 2 - Fix?

- What is the difference between this example and cases where the Franchisor dictates the type of accounting system the Franchisee must use?
- Eliminate the requirement.
- Modify agreement to return control of accounts and debt payment to the Franchisee.



Example 3

- Franchisor has the unilateral right to purchase any or all of the assets of the Franchisee at any time upon 90 days notice.
- Fixes- Franchisor could
 - ◆ Remove the provision.
 - ◆ Agree not to enforce this provision for the life of the loan.



Example 4

- Paragraph 9a. -Franchisor consent to transfer of the franchise business will not be unreasonably withheld. Paragraph 9c. - Franchisor reserves the right to absolutely withhold permission to the franchisee to transfer the franchise business.
- Fix-Remove Paragraph 9c.



Example 5

- Section 9a lists 5 reasonable conditions under which Franchisor will grant consent to transfer. Section 9d says “Franchisor shall have the right to impose such additional conditions, as in its absolute discretion it shall determine, with respect to granting or withholding of its consent to any transfer of this Franchise.” FIX?



Example 6

- Franchisor and Franchisee have the option to terminate the franchise on sixty days written notice on the 5th, 10th and 15th anniversary of the Agreement.
- Fix: Eliminate provision or don't enforce during the loan term.
- Compare: Franchise terminates in 10 years and the loan is for 15 years.



Example 7

- If Franchisor and Franchisee cannot agree on the fair market value of the property, Franchisor designates an appraiser to determine the fair market value, and this appraiser's determination is binding.
- Fix-Revise paragraph so that Franchisor doesn't unilaterally control choice of appraiser



Example 8

- In temp agency setting, all Franchisee's employees and clients are those of Franchisor;
- Clients make payment directly to Franchisor, which handles billings and payroll.
- These requirements appear to be uniform in the industry and no adequate fix has been found.



Formal Size Determination

- Applicant always has the right to request a formal size determination from the appropriate SBA Government Contracting Area Office. 13 CFR 121.1001(b)(1)
- There is no right of appeal from a formal size determination. SBA's Office of Hearings & Appeals may choose to review these decisions at applicant's request. 13 CFR 121.1101